

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 11, 2007 Session

RACHAEL AMANDA THOMPSON v. JACKIE LEE THOMPSON

Appeal from the Robertson Court for Chancery County
No. 16998 Laurence M. McMillan, Jr., Chancellor

No. M2006-00164-COA-R3-CV - Filed on January 24, 2007

The mother of the parties' only child appeals the dismissal of her post-divorce petition to modify the permanent parenting plan. The trial court held that the mother failed to carry her burden of proof to show a material change of circumstances since the divorce. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, J., and STEVE DANIEL, SR. J., joined.

Kimberley L. Reed-Bracey, Goodlettsville, Tennessee, for the appellant, Rachael Amanda Thompson.

Jackie Lee Thompson, Hendersonville, Tennessee, Pro Se.

MEMORANDUM OPINION¹

Rachael Amanda Thompson, the mother of the parties' only child, filed this post-divorce petition to modify the permanent parenting plan. The parties were granted a divorce in August of 2003 at which time the mother and the father, Jackie Lee Thompson, were granted joint custody of their only child. The permanent parenting plan called for the parents to share primary residential parenting responsibilities of their infant child on alternating weeks.

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

The petition to modify the permanent parenting plan was filed in February of 2005, eighteen months after the divorce. In the petition, the mother alleged that when the child was in the father's custody he and the stepmother failed to timely administer medicine the child needed to control chronic constipation and impacted bowels. The fact at the center of this controversy is that the child, who was three years old at the time of the hearing, has chronic, severe constipation and impacted bowels for which the doctor has prescribed two teaspoons of "Mira lax" in the morning and evening each day. In the petition, the mother alleged the child was in significant abdominal pain when she returned from her visits with the father, which she alleged was due to the father and stepmother failing to administer the medicine to the three-year old child. At the evidentiary hearing on the petition in December of 2005, the father admitted failing to administer the medicine on two occasions, but insisted that he had remedied this admitted deficiency.

The trial court made nineteen written findings of fact, some of which were adverse to the father, and most of the adverse findings were due to his financial omissions. The most significant finding material to the matter at issue is the trial court's finding of fact that the mother provided no medical proof which showed a causal connection between the father's acts and omissions and the child's problems. Based on this and the other findings, the trial court concluded that the mother failed to carry her burden of proof to show a material change of circumstances since the divorce and dismissed the petition to modify.

The standard of review of a trial court's findings of fact is *de novo* and we presume that the findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Rawlings v. John Hancock Mut. Life Ins. Co.*, 78 S.W.3d 291, 296 (Tenn. Ct. App. 2001). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). We also give great weight to a trial court's determinations of credibility of witnesses. *Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997); *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000).

Having examined the evidence in the record, we have concluded the evidence does not preponderate against the trial court's findings of fact, particularly the most significant finding that the mother failed to provide medical proof to establish a causal connection between the father's acts and omissions and the child's problems. Moreover, the evidence established that the father's failure to administer the medication on two occasions was due to the fact the child's medicine was not in her bag when the father picked up the child. This problem was corrected by the father obtaining a duplicate prescription of the child's medication.

As an additional issue, the mother contends the trial court erred by only awarding her \$3,000 of attorney fees instead of the \$8,701, plus expenses of \$709, that she requested. She also seeks attorney fees on appeal. The decision to award attorney's fees is within the sound discretion of the trial court. *See Richardson v. Richardson*, 969 S.W.2d 931, 936 (Tenn. Ct. App. 1997). An appellate court will not overturn a trial court's award of attorney's fees absent an abuse of discretion. *See*

Garfinkel v. Garfinkel, 945 S.W.2d 744, 748 (Tenn. Ct. App. 1996). Finding no factual or legal justification to overturn the trial court's decision regarding attorney fees, we affirm the decision to award \$3,000 of attorney fees. As for the mother's legal fees on appeal, inasmuch as we have ruled in favor of the father on every issue, we find no basis for the mother to recover her attorney fees on appeal.

The judgment of the trial court is affirmed in all respects, and this matter is remanded with costs of appeal assessed against the appellant, Rachael Amanda Thompson.

FRANK G. CLEMENT, JR., JUDGE